

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. :
 :
 CHARLES KENNEDY : Criminal No. 06-591

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

May 2, 2007

Charles Kennedy asks this Court to suppress crack cocaine and a firearm found in his car during a traffic stop and crack cocaine found in his car during an arrest two weeks later. Because I agree with the Government that the traffic stop was not pre-textual and the later search was incident to arrest, I will deny Kennedy's motion to suppress the evidence against him.

FINDINGS OF FACT

I make the following findings of fact:

1. On Feb. 21, 2006 Cpl. Scott Neuhaus of the Coatesville City Police Department saw a maroon Oldsmobile Aurora backing out of a parking space at the Turkey Hill.
2. Cpl. Neuhaus could not see the driver through the tinted side window, but could see the passenger in the light from the store through the car's front window.
3. Cpl. Neuhaus, using his experience as a police officer, recognized the front window tint exceeded the legal limit of 30 percent tint.
4. When Cpl. Neuhaus pulled into the just-vacated parking stall, he saw a pile of tobacco on the ground. The tobacco had neither been smashed nor dispersed, suggesting it was fresh.
5. In Cpl. Neuhaus's experience he knew drug users often replace the tobacco in cigars with

marijuana, calling the result a “blunt.”

6. Cpl. Neuhaus did not park, but followed the maroon Aurora out of the parking lot on to Rt. 82.

7. Cpl. Neuhaus caught up with the Aurora at the traffic light at the intersection of Rt. 82 and First Avenue, Coatesville.

8. As soon as Cpl. Neuhaus showed his emergency lights, the Aurora pulled over.

9. Cpl. Neuhaus approached the driver’s side of the car and asked for license, registration and proof of insurance.

10. When the driver lowered the window, Cpl. Neuhaus smelled burning marijuana, an odor he recognized from his training and experience.

11. Cpl. Neuhaus checked the registration and license, both issued to Charles Kennedy, and asked for an officer for backup.

12. When Cpl. Neuhaus checked the passenger’s identification, he recognized her name as someone for whom the City had outstanding warrants, but released her with a warning to take care of them.

13. Cpl. Neuhaus testified credibly he does not usually write a citation for illegally tinted windows on the first stop, but gives the offender a warning and time to reduce the tint.

14. The Cpl. told both the driver and the passenger they were free to go, but he was going to hold the car for a search warrant because of the smell of burning marijuana.

15. Cpl. Neuhaus said Kennedy told him, “I didn’t need a warrant, I could search. I give you permission.”

16. Kennedy voluntarily consented to the search of the vehicle.

17. Cpl. Neuhaus testified Kennedy asked his passenger where the blunt was and she replied it was under her seat.
18. I find not credible Kennedy's denial that he asked his partner where the blunt was and his denial he consented to the search of his car.
19. When the backup car arrived, Cpl. Neuhaus searched the Aurora, finding the blunt and a locked glove box, for which Kennedy said he did not have a key.
20. Cpl. Neuhaus did not remember when but testified he measured the tint on the driver's side window of the Aurora and it registered 31 percent. Cpl. Neuhaus elected not to ticket Kennedy for the tint violation.
21. Two Coatesville detectives, Chris McEvoy and Sean Murrin, returned with a search warrant signed by a Pennsylvania magisterial district judge, which the officers executed at the Coatesville Police Station.
22. In the glove box, the officers found a handgun, marijuana, crack cocaine, and a ripped up receipt showing Kennedy's name.
23. The drugs were field tested, and the detectives typed an arrest warrant for Kennedy, who had been released.
24. The arrest warrant was printed from the police computer system, but never sent to the magisterial district judge for signature.
25. The Coatesville police had a valid home address for Kennedy, but did not execute the warrant for more than two weeks.
26. A cooperating witness told the Coatesville police Kennedy would be driving into Coatesville with a quantity of crack cocaine.

27. Coatesville officers saw Kennedy driving on March 7, 2006, made a U-turn in an effort to pursue him, but lost him in traffic.
28. The next day, the detectives on the lookout for Kennedy saw him driving a red Ford Bronco, stopped him to execute the unsigned arrest warrant from February 22, 2007.
29. The detectives arrested Kennedy in Caln Township, outside their jurisdiction of Coatesville.
30. Both detectives testified they separately saw the top of an amber pill bottle in the console area between the two front seats.
31. One detective said it was in a cup holder, the other said it was protruding from the console box.
32. The detectives opened the pill bottle, identified the contents as crack cocaine, and then obtained a signature on the warrant for Kennedy's arrest, which they executed.

DISCUSSION

Kennedy raises four challenges to the evidence gathered against him in this case. He argues the initial car stop was pre-textual and without probable cause, the search of his car was without consent, and the arrest on March 8 lacked a warrant or probable cause, rendering the seizure of the pill bottle illegal.

Kennedy's argument I should apply a probable cause standard to the traffic stop is unavailing. The *Terry*¹ reasonable suspicion standard applies to routine traffic stops. *U.S. v. Elfin-Colina*, 464 F.3d 392, 397 (3d Cir. 2006). A police officer has the initial burden of providing the "specific, articulable facts" to justify a reasonable suspicion to believe that an individual has violated the traffic laws. *Id.* (internal citations omitted). When I consider the traffic stop, I find Cpl. Neuhaus credibly

¹*Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968).

articulated the tinted windows gave him reason to make the Feb. 21, 2006, traffic stop. An officer's ulterior motive for making a stop is irrelevant. *Whren v. United States*, 517 U.S. 806, 813 (1996). Reason to believe a traffic violation occurred makes the stop and search legal regardless of the officer's subjective intent. *Ohio v. Robinette*, 519 U.S. 33, 38 (1996) (holding motive of officer irrelevant).

The traffic stop was reasonable and the readily-detected smell of burning marijuana, *Arizona v. Hicks*, 480 U.S. 321, 323-26 (1987), provided Cpl. Neuhaus reasonable grounds on which to request a search. Consent is an exception to the Fourth Amendment's prohibition of warrantless searches of automobiles. *Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973). The voluntariness of consent "is a question of fact to be determined from the totality of all of the circumstances." *Id.* at 227. The totality of the circumstances includes "the setting in which the consent was obtained, the parties' verbal and non-verbal actions, and the age, intelligence, and educational background of the consenting individual." *United States v. Givan*, 320 F.3d 452, 459 (3d Cir. 2003). In this case, Cpl. Neuhaus told Kennedy and his passenger they were free to go, the encounter took place in a public place,² and the smell of burning marijuana gave Cpl. Kennedy probable cause to obtain a search warrant. Kennedy's offer of consent only facilitated the inevitable. The officers obtained the warrant before searching the locked glove compartment.

The Feb. 22, 2006 arrest warrant was based on the handgun and the crack cocaine found in the glove compartment. Kennedy argues the arrest warrant was either invalid, because it was not signed by a magisterial district judge, or stale, either of which would render his arrest warrantless and illegal. I need not decide whether an unsigned warrant comes within the good faith exception

²Kennedy's step-father came on the scene and watched the proceedings

or whether an arrest warrant can become stale because an arrest may be made in a public place without a warrant. *U.S. v. Bush*, 647 F.2d 357, 366 (3d Cir. 1981) (citing *Payton v. New York*, 445 U.S. 573, 574 (1980)). Officers only need probable cause to believe the defendant has committed a felony to effect an arrest. *United States v. Watson*, 423 U.S. 411, 417 (1977) (upholding a statute permitting warrantless arrests by postal inspectors); *see also* Pa. R. Crim. P. 502 (allowing an arrest where there is probable cause to believe the person has committed a felony). In this case, the two officers who arrested Kennedy on March 8, Detectives McEvoy and Murrin, were the same two officers who obtained and executed the search warrant on February 22, finding an unlicensed handgun and crack cocaine. The detectives had probable cause to believe Kennedy had committed a felony; thus, under *Watson*, the arrest is reasonable. Because the detectives could reasonably arrest Kennedy, Kennedy's argument on the lack of exigency to provide an exception to the warrant requirement is superfluous.

Kennedy's finally argues I should suppress the crack cocaine found in the amber pill bottle during his March 8 arrest. The pill bottle, similar to the one found in Kennedy's glove compartment on February 22, was in plain view, seen by both detectives, although they had slightly different recollections of its position in the Bronco. When an officer has probable cause to believe an automobile contains evidence of a crime, any part of the vehicle may be searched. *Karnes v. Skrutski*, 62 F.3d 485, 498 (3d Cir. 1995). An officer may open a container which he reasonably believes contains contraband. *United States v. Salmon*, 944 F.2d 1106, 1123 (3d Cir. 1991). The detectives knew Kennedy secreted crack cocaine in an amber pill bottle in his car on February 21; thus, they permissibly searched the discovered pill bottle.

CONCLUSIONS OF LAW

1. The initial traffic stop on Feb. 21, 2006, did not violate the Fourth Amendment's prohibition on unreasonable searches and seizures because Cpl. Neuhaus articulated a reason to believe Kennedy's window tinting violated the Pennsylvania Vehicle Code. *U.S. v. Delfin-Colina*, 464 F.3d 392, 397 (3d Cir. 2006)
2. Because the traffic stop was legal, the smell of burnt marijuana was readily detectable. .
3. The smell of burnt marijuana made the search of the vehicle reasonable. *Arizona v. Hicks*, 480 U.S. 321, 323-26 (1987).
4. Kennedy's consent obviated the need to obtain a warrant to search. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).
5. Kennedy's arrest on March 8 did not offend the Fourth Amendment's prohibition on warrantless seizures because the Cpl.s reasonably believed Kennedy had committed a felony. *United States v. Watson*, 423 U.S. 411 (1977).
6. The recovery of the amber pill bottle on March 8 was not unreasonable because it was in plain view and the detectives reasonably believed it contained contraband. *United States v. Salmon*, 944 F.2d 1106, 1123 (3d Cir. 1991).
7. None of the evidence against Kennedy was searched for or seized in a manner offensive to the Fourth Amendment.
8. Therefore, I enter the following:

ORDER

And now, this 3rd day of May, 2007, Defendant's Motion to Suppress (Document 13) is
DENIED.

BY THE COURT:

Juan R. Sánchez

J.